



OLC 78-0903/1

15 March 1978

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MEMORANDUM FOR: Deputy General Counsel

FROM: Acting Legislative Counsel

SUBJECT: Legislative Interpretation of the "Role of the Ambassador" Provision in P.L. 93-475

1. Section 12 of P.L. 93-475, relating to the role of the U.S. ambassadors, originated in the Senate; and the Senate report indicates that it derived from, and was intended to be consistent with, President Nixon's 16 December 1969 letter and President Kennedy's 29 May 1961 letter concerning ambassadorial responsibilities. The central theme of these letters and of classified cables which supplemented them was that, while the ambassador had the responsibility and authority for U.S. Government actions abroad, there were certain aspects of intelligence operations in which he did not necessarily have to involve himself and which the Director of Central Intelligence had a statutory duty to protect. Where differences of opinion arose, the ultimate decision would be made in Washington, after consultation between the Secretary of State and the Director of Central Intelligence. This flexibility was required to resolve possible conflicts between the ambassador's duties and the Director's statutory responsibility to protect intelligence sources and methods.

2. The preamble "under the direction of the President" in Section 12 was inserted at the insistence of the House of Representatives and approved in conference, and it is apparent from the legislative history that this language was intended to preserve this flexibility.

3. A review of Office of Legislative Counsel journal items from July 1974 through early October 1974 (relevant items attached) indicates that the State Department itself, through its Office of Congressional Relations; the CIA, through its Office of Legislative Counsel; and the Department of Defense approached the House Foreign Affairs Committee



seeking a qualification of the Senate language. Both the State Department and CIA took the position with the Subcommittee on State Department Organization and Foreign Operations that the Senate language was too absolute and intruded upon the constitutional prerogatives of the President, undermining the flexibility that existed under Presidential directives regarding ambassadorial responsibilities. The Committee was told that existing Presidential directives provided a degree of flexibility and that some qualifying language (such as "under the direction of the President") was necessary for consistency. It was on this basis that Chairman Wayne Hayes adopted this position in conference and in a floor statement that:

"The Senate bill delineated the authority and the responsibility of ambassadors basing its language upon letters that President Kennedy and President Nixon had sent to their ambassadors during their Presidency. We thought that the Senate language, however, intruded upon the constitutional role of the President. We insisted, and the Senate conferees agreed, that all powers exercised by an ambassador were to be under the direction of the President." (120 Cong. Rec. 10396, 1974)

The public record is void of additional legislative history on this point.


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4. ☐ In terms of additional legislative interpretation of the provision, the following considerations are applicable:

a. The role of the ambassador as the representative of the President in a particular foreign country to carry out the foreign relations of the United States is clear and has never been at issue. Therefore, it could reasonably be argued no additional legislative authority was or is necessary. Section 12 of P.L. 93-475 was meant to clarify the already clearly established and proper role of U.S. ambassadors. To be sure, section 12 was proposed at least in part to address issues relating to U.S. intelligence activities abroad. The fact that this was one reason it was proposed clearly indicates that the further amendatory language--"under the direction of the President"--was intended as a limitation on this clarification of the role of ambassadors.

(b) The precise language--"under the direction of the President"--by its terms adds nothing to the role of the ambassador as the President's representative for foreign relations purposes; this is the historical and appropriate mandate of the U.S. ambassador and needed no clarification. Furthermore, and as recognized by the reasoning behind the proposal of section 12, there are activities conducted abroad pursuant to Presidential authority that are not and cannot be publicly attributable to the U.S. Government, thus the euphemism "special activity" or "covert action." This category of activities has been recognized both by statute--the Hughes-Ryan Amendment--and by Executive Order--E.O. 12036. Thus, since the language "under the direction of the President" clearly does not place a limitation on the extant responsibilities of U.S. ambassadors and since there are non-foreign-relations activities conducted pursuant to Presidential authority, this language must refer to these other activities. The lack of public debate on the language is indicative of the fact that it applies to this other or "special" category of activities; if it referred to the traditional foreign relations role of ambassadors, there obviously would have been additional public debate.

SIGNED


Acting Legislative Counsel

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